IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

OurPet's Company, *Plaintiff*, *v.* **Arjan Impex**, *Defendant*.	Case No. 1:13-cv-02550-PAG Judge Patricia A. Gaughan **ARJAN IMPEX'S ANSWER TO PLAINTIFF'S COMPLAINT, AFFIRMATIVE DEFENSES, COUNTERCLAIM AND JURY DEMAND**

Arjan Impex ("Arjan"), by its undersigned attorneys, answers and responds to the Complaint of OurPet's Company ("Plaintiff") on a paragraph-by-paragraph basis as follows:

THE PARTIES

1. Arjan is without sufficient knowledge or information to form a belief as to the allegations of paragraph 1 and, therefore, denies those allegations.

2. Arjan admits that it is a business entity located in India. Arjan denies the remaining allegations set forth in paragraph 2.

JURISDICTION AND VENUE

3. Arjan denies the allegations set forth in paragraph 3 because they state a legal conclusion for which no answer is required. To the extent an answer is deemed required, Arjan does not contest that this action for patent infringement. Arjan further does not contest that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 with respect to United States Patent No. 8,286,589 ("the '589 Patent") and United States Patent No. D565,253 ("the '253 Patent"). Arjan denies the remaining allegations set forth in paragraph 3.

4. Arjan denies the allegations set forth in paragraph 4 because they state a legal conclusion for which no answer is required. To the extent an answer is deemed required, Arjan does not contest that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 with respect to the ‘589 Patent and the ‘253 Patent. Arjan denies the remaining allegations set forth in paragraph 4.

5. Arjan denies the allegations set forth in paragraph 5 because they state a legal conclusion for which no answer is required. To the extent an answer is deemed required, Arjan does not contest personal jurisdiction in this Judicial District for purposes of this action only. Arjan denies the remaining allegations set forth in paragraph 5.

6. Arjan denies the allegations set forth in paragraph 6 because they state a legal conclusion for which no answer is required. To the extent an answer is deemed required, Arjan does not contest personal jurisdiction in this Judicial District for purposes of this action only. Arjan denies the remaining allegations set forth in paragraph 6.

7. Arjan denies the allegations set forth in paragraph 7 because they state a legal conclusion for which no answer is required. To the extent an answer is deemed required, Arjan does not contest personal jurisdiction in this Judicial District for purposes of this action only. Arjan denies the remaining allegations set forth in paragraph 7.

8. Arjan denies the allegations set forth in paragraph 8 because they state a legal conclusion for which no answer is required. To the extent an answer is deemed required, Arjan does not contest venue in this Judicial District for purposes of this action only. Arjan denies the remaining allegations set forth in paragraph 8.

FACTUAL ALLEGATIONS

9. Arjan is without sufficient knowledge or information to form a belief as to the allegations set forth in paragraph 9 and, therefore, denies those allegations.

10. Arjan is without sufficient knowledge or information to form a belief as to the allegations set forth in paragraph 10 and, therefore, denies those allegations.

11. Arjan is without sufficient knowledge or information to form a belief as to the allegations set forth in paragraph 11 and, therefore, denies those allegations.

12. Arjan is without sufficient knowledge or information to form a belief as to the allegations set forth in paragraph 12 and, therefore, denies those allegations.

13. Arjan is without sufficient knowledge or information to form a belief as to the allegations set forth in paragraph 13 and, therefore, denies those allegations.

14. Arjan is without sufficient knowledge or information to form a belief as to the allegations set forth in paragraph 14 and, therefore, denies those allegations.

15. Arjan is without sufficient knowledge or information to form a belief as to the allegations set forth in paragraph 15 and, therefore, denies those allegations.

16. Arjan is without sufficient knowledge or information to form a belief as to the allegations set forth in paragraph 16 and, therefore, denies those allegations.

17. Arjan admits that United States Patent No. 8,286,589 is attached as Exhibit 1 to the Complaint, is entitled "Covered Bowls Such as Pet Food and Water Bowls," lists on its face Steven Tsengas as an inventor and states on its face on issue date of October 16, 2012. Arjan denies the remaining allegations set forth in paragraph 17.

18. Arjan is without sufficient knowledge or information to form a belief as to the allegations set forth in paragraph 18 and, therefore, denies those allegations.

19. Arjan denies the allegations set forth in paragraph 19.

20. Arjan admits that United States Patent No. D565,253 is attached as Exhibit 2 to the Complaint, is entitled "Pet Feeder with Non-Skid Lower Surface," lists on its face Steven Tsengas and Siddarth Modi as inventors and states on its face on issue date of March 25, 2008. Arjan denies the remaining allegations set forth in paragraph 20.

21. Arjan is without sufficient knowledge or information to form a belief as to the allegations set forth in paragraph 21 and, therefore, denies those allegations.

22. Arjan denies the allegations set forth in paragraph 22.

23. Arjan is without sufficient knowledge or information to form a belief as to the allegations set forth in paragraph 23 and, therefore, denies those allegations.

24. Arjan denies the allegations set forth in paragraph 24.

25. Arjan admits that it manufactures, sells and markets dog bowls. Arjan denies the remaining allegations set forth in paragraph 25.

26. Arjan denies the allegations set forth in paragraph 26.

27. Arjan denies the allegations set forth in paragraph 27.

28. Arjan denies the allegations set forth in paragraph 28.

29. Arjan admits that it has sold its products. Arjan denies the remaining allegations set forth in paragraph 29.

30. Arjan denies the allegations set forth in paragraph 30.

31. Arjan denies the allegations set forth in paragraph 31.

32. Arjan denies the allegations set forth in paragraph 32.

33. Arjan denies the allegations set forth in paragraph 33.

CLAIM NO. 1

34. Arjan incorporates its foregoing responses to the paragraphs above as if fully set forth herein.

35. Arjan denies the allegations set forth in paragraph 35.

36. Arjan denies the allegations set forth in paragraph 36.

37. Arjan denies the allegations set forth in paragraph 37.

38. Arjan denies the allegations set forth in paragraph 38.

39. Arjan denies the allegations set forth in paragraph 39.

40. Arjan denies the allegations set forth in paragraph 40.

CLAIM NO . 2

41. Arjan incorporates its foregoing responses to the paragraphs above as if fully set forth herein.

42. Arjan denies the allegations set forth in paragraph 42.

43. Arjan denies the allegations set forth in paragraph 43.

44. Arjan denies the allegations set forth in paragraph 44.

45. Arjan denies the allegations set forth in paragraph 45.

46. Arjan denies the allegations set forth in paragraph 46.

47. Arjan denies the allegations set forth in paragraph 47.

SEPARATE DEFENSES

FIRST AFFIRMATIVE DEFENSE
NONINFRINGEMENT OF U.S. PATENT NO. 8,286,589

1. Arjan has not infringed and is not infringing, directly or indirectly, literally or under the doctrine of equivalents, any valid claim of U.S. Patent No. 8,286,589 (the ‘589 Patent).

SECOND AFFIRMATIVE DEFENSE
NONINFRINGEMENT OF U.S. PATENT NO. D565,253

2. Arjan has not infringed and is not infringing, directly or indirectly, literally or under the doctrine of equivalents, any valid claim of U.S. Patent No. D565,253 (the ‘253 Patent).

THIRD AFFIRMATIVE DEFENSE
INVALIDITY OF U.S. PATENT NO. 8,286,589

3. The claims of the ’589 Patent are invalid for failure to meet one or more of the conditions for patentability specified in Title 35 of the United States Code, particularly §§ 101, 102, 103 and/or 112.

FOURTH AFFIRMATIVE DEFENSE
INVALIDITY OF U.S. PATENT NO. D565,253

4. The claim of the ’253 Patent is invalid for failure to meet one or more of the conditions for patentability specified in Title 35 of the United States Code, particularly §§ 101, 102, 103, 112, and/or 171.

FIFTH AFFIRMATIVE DEFENSE
FAILURE TO STATE A CLAIM

5. The Complaint fails to state a claim upon which relief can be granted.

SIXTH AFFIRMATIVE DEFENSE
WAIVER, ESTOPPEL, LACHES AND UNCLEAN HANDS

6. Plaintiff’s claims are barred by the equitable doctrines of waiver, estoppel, laches, and unclean hands.

SEVENTH AFFIRMATIVE DEFENSE
MARKING

7. The relief sought by Plaintiff is barred or limited by the failure of Plaintiff to mark its products or to otherwise give notice to Arjan pursuant to 35 U.S.C. § 287.

EIGHTH AFFIRMATIVE DEFENSE
RESERVATION OF RIGHTS

8. Arjan's asserted affirmative defenses are based on information available and accessible to Arjan at this time. Arjan's investigation of its defenses will continue throughout discovery in this matter and Arjan reserves the right to supplement and/or amend these defenses.

PRAYER FOR RELIEF / REQUEST FOR REMEDIES

Arjan denies that Plaintiff is entitled to any of the relief sought in its Prayer for Relief / Request for Remedies.

COUNTERCLAIMS

Counterclaim Plaintiff Arjan Impex ("Arjan") for its Counterclaims against Counterclaim Defendant OurPet's Company ("Plaintiff") alleges as follows:

PARTIES

1. Arjan is a corporation organized and existing under the laws of the India having a principal place of business at Ag-100, Sanjay Gandhi Transport Nagar, Sanjay Gandhi Transport Nagar, New Delhi, DL 110042, India.

2. Arjan is in the business of designing, manufacturing and selling pet products and food service products.

3. Upon information and belief, Plaintiff is a Colorado corporation having principal place of business in Fairport Harbor, Ohio. Upon information and belief, Plaintiff designs, produces and markets pet products in this Judicial District.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the action involves claims arising under the patent laws of the United States, 35 U.S.C. §§ 1 et seq.

5. This Court may declare the rights and other legal relations of the parties pursuant to 28 U.S.C. §§ 2201 and 2202 because this is a case of actual controversy within the Court's jurisdiction.

6. This Court has personal jurisdiction over Plaintiff because, upon information and belief: (1) Plaintiff has its principal place of business within this Judicial District; (2) Plaintiff sells products within this Judicial District; and (3) Plaintiff has sued against Arjan in this Judicial District in the immediate action.

7. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(b)-(d) and 28 U.S.C. § 1400(b).

BACKGROUND

8. Upon information and belief, Plaintiff claims to own the entire right, title, and interest in and to U.S. Patent No. 8,286,589 ("the '589 Patent").

9. Upon information and belief, Plaintiff claims to own the entire right, title, and interest in and to U.S. Patent No. D565,253("the '253 Patent").

10. On or about November 18, 2013, Plaintiff filed a Complaint against Arjan, alleging that Arjan infringes the '589 Patent and the '253 Patent.

11. In its Complaint, Plaintiff alleges that Arjan's "Peerless Pet Premium Bowl with rubber base" infringes the '589 Patent and the '253 Patent.

12. Accordingly, there is an actual, substantial and continuing justiciable case and controversy between Arjan and Plaintiff regarding the '589 Patent and the '253 Patent, over which this Court can and should exercise jurisdiction, and declare the rights of the parties.

13. Arjan is therefore entitled to bring and maintain these Counterclaims for declaratory judgment pursuant to 28 U.S.C. § 2201.

COUNT I
(Declaratory Judgment of Non-Infringement of the '589 Patent)

14. Arjan incorporates the allegations of paragraphs 1-13, as though set forth herein.

15. Arjan has not infringed and does not infringe, either directly, contributorily or through inducement any claims of the '589 Patent.

16. As a result of the filing of this action, an actual controversy now exists between Plaintiff and Arjan regarding the alleged infringement by Arjan of the '589 Patent.

17. Arjan is therefore entitled to a declaratory judgment that it has not and is not infringing any valid and enforceable claim of the '589 Patent.

COUNT II
(Declaratory Judgment of Invalidity of the '589 Patent)

18. Arjan incorporates the allegations of paragraphs 1-17, as though set forth herein.

19. Arjan is informed and believes and thereon alleges that any and all asserted claims of the '589 Patent are invalid under 35 U.S.C. §§ 102, 103 and/or 112.

20. As a result of the filing of this action, an actual controversy now exists between Plaintiff and Arjan regarding the validity of the asserted claims of the '589 Patent.

21. Arjan is therefore entitled to a declaratory judgment that any and all of the asserted claims of the '589 Patent are invalid.

COUNT III
(Declaratory Judgment of Non-Infringement of the '253 Patent)

22. Arjan incorporates the allegations of paragraphs 1-21, as though set forth.

23. Arjan has not infringed and does not infringe, either directly, contributorily or through inducement the claim of the '253 Patent.

24. As a result of the filing of this action, an actual controversy now exists between Plaintiff and Arjan regarding the alleged infringement by Arjan of the '253 Patent.

25. Arjan is therefore entitled to a declaratory judgment that it has not and is not infringing any valid and enforceable claim of the '253 Patent.

COUNT IV
(Declaratory Judgment of Invalidity of the '253 Patent)

26. Arjan incorporates the allegations of paragraphs 1-25, as though set forth herein.

27. Arjan is informed and believes and thereon alleges that claim of the '253 Patent is invalid under 35 U.S.C. §§ 102, 103, 112 and/or 171.

28. As a result of the filing of this action, an actual controversy now exists between Plaintiff and Arjan regarding the validity of the claim of the '253 Patent.

29. Arjan is therefore entitled to a declaratory judgment that the claim of the '253 Patent is invalid.

PRAYER FOR RELIEF

WHEREFORE, Arjan respectfully requests that the Court enter judgment against Plaintiffs to include:

A. The dismissal of Plaintiff's Complaint, with prejudice, and denial of Plaintiff's requested relief in the Complaint and any relief whatsoever.

B. That Arjan does not infringe, either directly or indirectly, any valid and enforceable claim of the '589 Patent or the '253 Patent.

C. That the asserted claims of the '589 Patent and the '253 Patent are invalid.

D. A permanent injunction prohibiting Plaintiff and those acting on its behalf from asserting or threatening to assert infringement of the '589 Patent or the '253 Patent against Arjan or any of its agents, employees, representatives, strategic business partners, distributors, contractors, customers, advisors, and investors.

E. That Arjan has prevailed against Plaintiff on all of Arjan's Counterclaims.

F. That this is an exceptional case within the meaning of 35 U.S.C. § 285, warranting an award to Arjan of attorneys' fees, costs, and expenses incurred in this action.

G. That Arjan is entitled to its costs.

H. Such other such relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Arjan hereby requests a jury trial on all issues so triable.

Respectfully submitted this 13th day of February 2014,

/s/ Brandon M. White
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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February 2014, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Brandon White
Brandon M. White